IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 64 OF 2000.

State of Goa, represented by the
Range Forest Officer, Sanguem. ... Appellant.

Versus

1. Shri Babal Tari, Mine Owner,
House No. 112, Sanguem.
2. Shri K.H. Babu, Mines
Manager, Opp. Government
Health Centre, Curchorem.
3. Shri Deepak Patil, "A"
Ward, Shivaji Pet,
Kolhapur, Maharashtra. ... Respondents.

Mr. A. P. Lawande, Public Prosecutor for the Appellant State.

Mr. Sudesh Usgaonkar, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 7th January 2002.

ORAL JUDGMENT.

The present appeal has been filed by the State challenging the acquittal of the respondents for offences punishable under Section 5 read with Section 26(1)(a), Sections 26(1)(d), (f), (g), (k) and Section 41 of the Indian Forest Act and under Section 2(ii) of the Forest Conservation Act. The Judicial Magistrate, First Class Sanguem, vide Judgment dated 15th January 2000, in Criminal Case No. 11/N/96, had acquitted the respondents for the aforesaid offences. The said Judgment is now assailed in the present appeal before me.

2. The brief facts necessary for the decision of the appeal are set out hereunder:-

P.W.3 Anil Shetgaonkar was working as Range Forest Officer, Sanguem, from October 1991 to June 1996. According to him, the Government of Goa owns reserve forest by name Vagped Reserve Forest, situated at Bhati Village in Sanguem Taluka, admeasuring 1020 hectares. The said forest was declared as a Reserve Forest by Government Gazette No. 53 dated 31st March 1977, a copy of which is at Exhibit P.W.3/A. According to him, survey numbers 30 and 31 of Bhati Village forms part of this Reserve Forest and the said survey numbers, as per Form I and XIV, belong to the Government. The respondent no. 1 had been granted mining concession lease for the aforesaid survey numbers under title concession No. 31/58. The respondent no. 1 had filed an application on 1st December 1993 for renewal of his mining lease under the Forest Conservation Act enclosing several separate plans. The copy of the said application and one of the plans furnished by the respondent no. 1 are at Exhibit P.W.3/C. The respondent no. 2 is said to be the Manager of the mine of the respondent no. 1.

3. According to P.W.3 Anil Shetgaonkar, he alongwith P.W.4 Subhash Kharade and P.W.5 Zikria Agha had gone and inspected the mine on 28th June 1995. On inspection he noticed a recently dug pit, which, according to P.W.3, was an extension of the old mining pit of the respondent no. 1. In the newly dug pit he found roots of trees which had been recently cut. He also noticed fire wood pieces

lying in one corner of the pit and the wood of the cut trees was estimated to be 4 cubic metres. He also noticed that the soil of the newly dug pit was dumped on a new area of 100 x 60 metres, which had earlier been covered by trees. A bulldozer belonging to respondent no. 3 was seen operating in the newly dug pit. Pieces of roots of the trees were also seen in the area where the soil was dumped. A panchanama Exhibit P.W.3/D Colly came to be scribed. The newly dug pit is shown at point 'A' in the sketch produced and the area where the soil was dumped is shown at point 'B' in the said sketch. This panchanama was scribed in the presence of P.W.1 Ajit Mandar and P.W.2 Krishna Bhatikar. The bulldozer which was found at the site was also seized and attached under the said panchanama. The Forest Offence Register was filed on the same day. The Forest Offence Register was signed by P.W.4 Subhash Kharade and the same is at Exhibit P.W.4/A. The fire wood and the other wood which were found there were transported in a tempo to the Barazan Forest Colony. Due to the encroachment committed by the respondents, P.W.3 estimated the loss at Rs. 49,000/-. Vide Exhibit 8, the substance of the accusation was explained to the respondents/original accused, who pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case examined 5 witnesses. The prosecution examined two panch witnesses, who are P.W.1 Ajit Mandar and P.W.2 Krishna Bhatikar. The

prosecution examined P.W.3 Anil Shetgaonkar, who was the Range Forest Officer. The prosecution also examined P.W.4 Subhash Kharade, who was the Forest Guard and P.W.5 Zikria Agha, who, at the time, was the Deputy Range Forest Officer. The respondents, in their defence, denied that there was any extension of the mining pit. The respondent no. 2 had stated that the bulldozer was used to tow a truck. The respondent no. 3, owner of the bulldozer, had stated that the bulldozer had been hired for preparing roads.

5. The learned trial Judge, after appreciating the evidence, acquitted the respondents/accused on the principal ground that the prosecution had not been able to conclusively establish that the respondent no. 1 had extended the mining pit thereby committing the offence. The learned trial Judge also found that the panchanama Exhibit P.W.3/D could not be relied upon. The learned trial Judge also found that the evidence of P.W.3 to P.W.5 in respect of seizure of 4 cubic metres of wood did not inspire confidence. The trial Court, therefore, found that the prosecution had not been able to establish the offences against the respondents beyond reasonable doubt and, therefore, acquitted the respondents.

6. I have heard Mr. A.P. Lawande, the learned Public Prosecutor for the State and Mr. Sudesh Usgaonkar, the learned counsel for the respondents. With the

assistance of the learned counsel appearing for the parties, I have perused the evidence, the documents and the Judgment.

7. The learned trial Judge has elaborately discussed the evidence of the prosecution witnesses. In respect of the extension of the mining pit, the evidence of P.W.3 Anil Shetgaonkar is that the respondent no. 1 while seeking renewal of the mining concession had submitted a plan. He has admitted that he had taken a plan while going for inspection. He has also admitted that he had not taken any Surveyor when he had gone for inspection. He has also admitted that he does not know what is the area leased for mining operation. P.W.3 had produced a plan at Exhibit P.W.3/G. The plan at Exhibit P.W.3/G is the original of plan at Exhibit P.W.3/C Colly. P.W.3 has admitted that on both the plans the signature of respondent no. 1 is absent. P.W.3, however, states that the said plan is signed by one Mr. M.V. Khandeparkar, Geologist. He also admitted that the signature of the said Khandeparkar is not a complete signature but only comprises of initials. In the cross-examination he has denied a suggestion that the plan at Exhibit P.W.3/G / P.W.3/C is not a plan submitted by the respondent no. 1 alongwith his application. During the trial the said Geologist Khandeparkar was not examined at all. Similarly, the prosecution made no attempt to place on record any official sketch or plan to show what was the area given on lease to the respondent no. 1 for carrying on his

mining operations. The sketch alongwith the panchanama Exhibit P.W.3/D has also not been satisfactorily proved.

8. P.W.3 in the cross-examination admits that before the panchas reached at the site he had taken the measurements of the pit and the dump. According to him, from 9.30 a.m. till 10.30 a.m. they had recorded rough measurements. Thereafter from 10.30 to 11.30 a.m. they waited for the arrival of the panchas. Thus, it is apparent that the measurements were not taken in the presence of the panchas and no surveyor was present to take the measurements. In this background, the admission of P.W.1 Ajit Mandar "the panchanama was recorded by Range Forest Officer Shetgaonkar, in rough at the spot which was made fair at the office of accused no. 1" has to be considered. P.W.1 has further admitted in the cross-examination "the rough panchanama was recorded in Marathi and the fair panchanama in English. I do not know to read and write English very well." The trial Court has, therefore, correctly reached to a conclusion that the contents of the panchanama cannot be relied upon to fortify the case of the prosecution. The learned trial Court has noticed another infirmity in the panchanama. The panchanama at Exhibit P.W.3/D, which admittedly commenced at 11.30 a.m., shows that a bulldozer was found working. The evidence of the prosecution is that, after P.W.3 Anil Shetgaonkar visited the mine at 9.00 or 9.30 in the morning, the bulldozer was

asked to desist from carrying out any mining operation. If that was the case, how is it that the panchanama scribed at 11.30 a.m. shows that a bulldozer was being used in the mining operation?

9. The learned trial Judge also found that the prosecution had not been able to establish that 4 cubic metres of wood was found and transported to Barazan Forest Colony in a tempo. The details of the number of pieces of wood or the number of roots that were found are not stated in the panchanama P.W.3/D. There is no evidence as to what happened to that wood after it was in the custody of the forest officials. No attempt was made to get the seized wood identified from the panch witnesses or from P.W.3 to P.W.5. The learned trial Court also found that the statement of P.W.4 Subhash Kharade that the Forest Offence Register was recorded first and the panchanama subsequently was incorrect as the Forest Offence Register makes a reference to the panchanama.

10. The trial Court on appreciating the evidence had come to a conclusion that the prosecution had not been able to establish the offences against the accused beyond reasonable doubt. I have perused the evidence and I have examined the reasons of the learned trial Judge and I find that the reasons given by the trial Judge for acquitting the respondents are not perverse. On appreciating the evidence

tendered by the prosecution I an not inclined to take a view different from the view taken by the trial Court. According to me, the learned trial Judge has correctly appreciated the evidence and there is no miscarriage of justice in the acquittal of the respondents.

11. In view of this, there is no merit in the Appeal filed by the State challenging the acquittal of the respondents and, therefore, the Criminal Appeal is dismissed.

(P.V. HARDAS)
JUDGE.

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